



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 946**

**[Doc. No. AMS-FV-13-0067; FV13-946-2 FIR]**

**Irish Potatoes Grown in Washington; Temporary Change to the Handling Regulations and Reporting Requirements for Yellow Fleshed and White Types of Potatoes**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as a final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim rule that temporarily exempted yellow fleshed and white types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements under the Washington potato marketing order through June 30, 2014. The interim rule also modified an existing report to require handlers of yellow fleshed and white types of potatoes to report information necessary to administer the order during the period that such potatoes are exempt from handling requirements. This change is expected to reduce overall industry expenses and increase net returns to producers and handlers while giving the industry the opportunity to explore alternative marketing strategies.

**DATES:** Effective May 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson,  
Marketing Specialist, or Gary Olson, Regional Director,  
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Agreement Division, Fruit and Vegetable Program, AMS, USDA;  
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Small businesses may request information on complying  
with this and other marketing order regulations by viewing  
a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>;  
or by contacting Jeffrey Smutny, Marketing Order and  
Agreement Division, Fruit and Vegetable Program, AMS, USDA,  
1400 Independence Avenue SW, STOP 0237, Washington, DC  
20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938,  
or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under  
Marketing Order No. 946, as amended (7 CFR part 946),  
regulating the handling of Irish potatoes grown in  
Washington, hereinafter referred to as the "order." The  
order is effective under the Agricultural Marketing  
Agreement Act of 1937, as amended (7 U.S.C. 601-674),  
hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866, 13563, and 13175.

The handling of Irish potatoes grown in Washington is regulated by 7 CFR part 946. Prior to this change, yellow fleshed and white types of potatoes were subject to the requirements contained in the order's handling regulations (§ 946.336). The Washington potato industry was concerned that the cost of mandatory inspections for those types of potatoes, which has increased, may outweigh the benefits of having the quality regulations in place. By exempting yellow fleshed and white types of potatoes from handling regulations, the industry expects to reduce overall expenses and provide the handlers the opportunity to explore alternative marketing strategies.

Therefore, this rule continues in effect the interim rule that temporarily exempted yellow fleshed and white types of potatoes from the order's handling regulations through June 30, 2014. The interim rule also modified the order's reporting requirements to require reports from handlers of yellow fleshed and white types of potatoes through June 30, 2014. Assessments on all fresh yellow fleshed and white types of potatoes handled under the order will remain in effect during the temporary exemption.

In an interim rule published in the Federal Register on October 23, 2013 (78 FR 62967, Doc. No. FV-13-0067, FV13-946-2 IR), § 946.336 was changed to exempt yellow fleshed and white types of potatoes from handling requirements through June 30, 2014, and § 946.143 was modified to require that each person handling yellow fleshed and white types of potatoes submit a monthly report to the Committee during the exemption period.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small

agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

For the 2011-2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than \$7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2011-2012 was \$7.90 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately \$326,021. In view of the foregoing, the majority of Washington potato handlers and producers may be classified as small entities.

This rule continues in effect the action that exempted yellow fleshed and white types of potatoes from the minimum quality, maturity, pack, marking, and inspection

requirements under the order's handling regulations through June 30, 2014. This rule also continues in effect the interim rule that modified the order's reporting requirements to require reports from handlers of yellow fleshed and white types of potatoes during the exemption period. This change is expected to reduce overall industry expenses and provide the industry with the opportunity to explore alternative marketing strategies. This rule modifies §§ 946.143 and 946.336. Authority for the change in the order's rules and regulations is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70.

It is not anticipated that this rule will negatively impact small businesses. This rule temporarily exempts yellow fleshed and white types of potatoes from the minimum quality, maturity, pack, marking, and inspection requirements contained in the order's handling regulations. While inspections are not mandatory for such potatoes during the exemption period, handlers may choose to voluntarily have their potatoes inspected. Handlers are thus able to control costs based on the demands of their customers. The opportunities and benefits of this rule are equally available to all Washington potato handlers and producers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable and Specialty Crops.

This rule requires the submission of a monthly handler report for fresh yellow fleshed and white types potatoes handled during the exemption period. This rule modified the Russet Fresh Potato Report established for russet type potatoes to include yellow fleshed and white types of potatoes during the period those types of potatoes are exempted from regulation. The modified Self-Reporting Potato Form will provide the Committee with information necessary to track shipments and collect assessments. AMS has submitted the modified form and a Justification of Change to OMB for approval.

While this rule requires a reporting requirement for yellow fleshed and white types of potatoes, their exemption from handling regulations also eliminates, for the exemption period, the more frequent reporting requirements imposed under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity,

seed, prepeeling, processing, grading and storing in specified counties in Oregon, and experimentation.

Therefore, any additional reporting or recordkeeping requirements on either small or large handlers of yellow fleshed and white types of potatoes are expected to be offset by the elimination of the other reporting requirements currently in effect. In addition, the temporary exemption from handling regulations and inspection requirements for yellow fleshed and white types of potatoes is expected to reduce industry expenses.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meetings were widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. All Committee meetings where this action was discussed were public meetings. All entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before December 23, 2013. Three comments were received in response to the interim rule.

One comment supported exemption of yellow fleshed and white types of potatoes and urged similar action for red types of potatoes. An interim rule was published in the



**Federal Register** on February 12, 2014, (79 FR 8253) exempting red types of potatoes from the order's handling regulations.

A second comment raised concerns regarding the exemption of yellow fleshed and white types of potatoes with respect to Idaho State code and the sale of such potatoes in Idaho. Idaho State officials should be consulted regarding the application of state requirements, as applicable and as is appropriate.

The third comment was received from the Committee staff. The comment stated that on December 10, 2013, the Committee met to discuss the temporary exemption of yellow fleshed and white types of potatoes from the handling regulations. The comment further stated that, since October 24, 2013, the Committee has evaluated industry cost savings and the impact on the market resulting from the temporary exemption. No negative market impacts were experienced as a result of the temporary exemption of these potatoes from the handling regulations. Handlers have continued to meet their customers' specifications, either with voluntary inspection or with no inspection, during the temporary exemption. As a result, the Committee unanimously recommended extending the exemption period

indefinitely. Such a recommendation would result in additional rulemaking.

Accordingly, for the reasons given in the interim rule, USDA is adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0067-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the Federal Register (78 FR 62967, October 23, 2013) will tend to effectuate the declared policy of the Act.

#### **List of Subjects in 7 CFR Part 946**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

#### **PART 946 - IRISH POTATOES GROWN IN WASHINGTON**

Accordingly, the interim rule that amended 7 CFR part 946 and that was published at 78 FR 62967 on October 23, 2013, is adopted as a final rule without change.

Dated: April 28, 2014

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Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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